IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1263 OF 2001
ALONGWITH
NOTICE OF MOTION NO.865 OF 2002
ALONGWITH
CHAMBER SUMMONS NO.1901 OF 2004
IN
SUIT NO.298 OF 1996

Vijaykumar Ramrang Chaudhar ..Plaintiff.

Vs.

D.K.Soonawalla & Anr. ..Defendants.

Mr.S.Malik, Advocate for the Plaintiff.
Mr.D.C.Purohit, Advocate for the Defendants.

CORAM: S.U.KAMDAR, J.
DATED: 20TH DECEMBER, 2004

ORAL JUDGMENT :

The present suit has been filed by the Plaintiff inter-alia seeking an order and decree against the Defendants to hand over vacant possession of the flat No.1B in the building known as Jawaharabad in Hawaharabad Co-operative Housing Society at Plot No.35, 9th Road, TPS (IV) Bandra, Bombay. Further reliefs are also sought as and by way of damages and various other interim reliefs.

2. It is the case of the Plaintiff that the Plaintiff was in use, occupation and possession of the premises under a leave and licence agreement

dated 1.11.1972 and he has been physically dispossessed from the suit premises sometime or about in November, 1995 by the Defendant. In view of the unlawful dispossession, the Plaintiff has filed the present suit for recovery of possession of the premises under section 6 of the Specific Relief Act, 1963. It is the case of the Plaintiff that a prior suit in the Small Causes Court is pending which was filed by the mother of the Defendant No.1 and the wife of Defendant No.2 being R.A.E. Suit No.102/257/1990 for eviction. The said suit was pending uptil 1997. It is further case of the Plaintiff that when the Plaintiff was out of station, the Defendants, taking advantage thereof, took forcible possession of the premises and, on returning in 1995 the Plaintiff found that he is dispossessed from the suit premises. Accordingly, a police complaint was lodged by the Plaintiff being C.R.No.679 of 1995 which is registered. The Defendant No.1 was arrested and was released on bail on 22.1.1996.

3. The present suit has been filed under section 6 of the Specific Relief Act, 1963 and writ of summons was issued by the Prothonotary and Senior Master on 22.3.1996. The writ of summons was lodged on

8.9.1996 and on 18.9.1996 the writ of summons was transmitted by Registered A.D. for service to the Defendants. In the meantime, the Defendants were also served by personal service since the Plaintiffs were also seeking urgent ad-interim orders in the present suit. Pursuant to the said service, the Defendants engaged an Advocate and the matter was heard for ad-interim relief and, ad-interim reliefs were granted in favour of the Plaintiff herein.

4. In so far as writ of summons is concerned, on 3.10.1996 the packet which was sent the Defendant No.1 was received back by the Sheriff's Office and on 4.10.1996 an acknowledgment was received by the Office of the Sheriff in respect of Defendant No.2. On 5.10.1996 the Plaintiff's clerk collected the above acknowledgment indicating service to the 2nd Defendant. The suit appeared for directions before the learned Prothonotary and Senior Master on 27.4.2001. One Mr.D.Khatkhate, Advocate represented Shri Gangal, Advocate for the Defendants and requested time to file written statement and four weeks time was granted. On 22.6.2001 one Mr.A.Shanglikar appeared for the Defendants and sought further time for four weeks to file the written statement which was also granted. On

20.7.2001 and on 17.8.2001 further adjournments were sought to file written statement. However, no written statement was filed and, accordingly, by an order dated 14.9.2001 passed by the Prothonotary and Senior Master, the suit was transferred to the list of undefended suits. It is this order which has been challenged in the present Chamber Summons being Chamber Summons No.1263 of 2001. In the present Chamber Summons, it is being prayed that the said order dated 14.9.2001 should be set aside and the present suit should be listed for dismissal under Order XI Rule 21 of the Civil Procedure Code, 1908 for non-service on the Defendant.

5. A Notice of Motion being Notice of Motion No.865 of 2002 has also been taken out by the Defendants and, in the said Notice of Motion, a prayer is made, that the suit should be dismissed under Order IX, Rule 5 of the C.P.C. and proceedings under section 195 should be initiated under the Code of Criminal Procedure, 1973 against the Plaintiff and the clerk of the Plaintiff’s Advocate Mr.Gopal Sudrik and S.A.Rane, Bailiff of the Office of the sheriff of Bombay inter-alia on the ground that they have committed perjury by furnishing false information and for omitting to furnish proper information and

for filing false affidavits in this proceedings. Both, the Chamber Summons No.1263 of 2001 and Notice of Motion No.865 of 2002 are placed before me for hearing.

6. Before I deal with the said proceedings, a brief history is necessary to be set out. The Plaintiffs had taken out a Notice of Motion No.2574 of 1997 for various interim reliefs. By an order dated 2.12.1998 the said Notice of Motion was made absolute in terms of prayer clause b(ii). Thereafter, the Defendants took out Chamber Summons being Chamber Summons No.1036 of 1998 for discovery and inspection. The said Chamber Summons was made absolute in absence of the Advocate for the Plaintiffs. Thereafter, the Defendants took out a Contempt Petition being Contempt Petition No.54 of 1998. The said Contempt Petition was on the ground that the Plaintiffs have failed to give inspection. However, the said Contempt Petition was dismissed by this Court. Thereafter, the Defendants took out Notice of Motion No.3429 of 1998. By the said application, it was alleged that the inspection of certain documents is still not given. By an order 3.2.2000, D.K.Deshmukh, J. dismissed the said Notice of Motion by holding that the said motion is

misconceived and it is a frivolous motion and a cost of Rs.5,000/- was imposed against the Defendants. An Appeal was preferred against the said order before the Division Bench being Appeal No.430 of 2002. The said Appeal also came to be dismissed by an order dated 3.6.2002. The Defendants thereafter took out a further Notice of Motion being Notice of Motion No.4062 of 1999. Once again a complaint was made that the inspection of documents was not given therefore the suit should be dismissed. By an order dated 11.4.2002 the said Notice of Motion was dismissed. An appeal was preferred before the Division Bench against the said order of the learned Judge dated 11.4.2002 which also came to be dismissed. The Defendants thereafter took out Chamber Summons No.716 of 2002 seeking examination of the Plaintiff's Advocate's Clerk which also came to be dismissed by the learned Single Judge. An appeal was preferred against the said order which has also been dismissed. Thereafter, a Notice of Motion being Notice of Motion No.865 of 2002 has been taken out as well as the present Chamber Summons No.1263 of 2001 was taken out. The Notice of Motion No.865 of 2002 was disposed of by an order of the learned Single Judge dated 11.4.2002. Being aggrieved by the said order, an Appeal was preferred

before the Division Bench being Appeal No.430 of 2002. In the said Appeal, a consent order has been passed that both the Chamber Summons No.1263 of 2001 and the Notice of Motion No.865 of 2002 should be heard together and disposed of preferably within four months from the said date. Thereafter, by an administrative order passed by the learned Chief Justice both the said matters are assigned to the Chamber Judge. Both, the Chamber Summons No.1263 of 2001 and the Notice of Motion No.865 0f 2002 was heard by Karnik, J. on 19.6.2002 the learned Judge felt that evidence should be recorded in the Chamber Summons No.1263 of 2001 and, thus, oral evidence of the Defendant was recorded in part in Chamber Summons No.1263 of 2001 and the matter has been on board from time to time thereafter and the matter was listed before me on 22.11.2004.

7. On the said date i.e. 22.11.2004 an adjournment was sought and the matter was adjourned to 29.11.2004. Once again an adjournment was sought and the matter was listed for recording of evidence on 6.12.2004. On 6.12.2004 I have recorded the Examination-in-Chief of the Defendant in Chamber Summons No.1263 of 2001. The Defendant had lead the Examination-in-Chief of 6 pages and concluded his

Examination-in-Chief in respect of the said Chamber Summons No.1263 of 2001. On the said date, I passed an order that in view of conclusion of the Examination-in-Chief of the Defendant the same is closed and the matter is placed for cross-examination on the next date i.e. 13.12.2004. On 13.12.2004 the matter appeared on board but it did not reach for hearing and thus the matter is today i.e. 20.12.2004 for cross-examination of the Defendant. Today, the learned counsel for the Defendant has filed a Chamber Summons being Chamber Summons No.1901 of 2004 and has requested that the said Chamber Summons should be heard first before the present proceedings. The said Chamber Summons inter-alia seeks reliefs (i) that the Notice of Motion No.865 of 2002 and the Chamber Summons No.1263 of 2001 should be heard together in accordance with the order passed by the Division Bench dated 3.6.2002 in Appeal No.430 of 2002. A further prayer is sought that the order dated 6.12.2004 closing the examination-in-chief of the Defendant No.1 should be set aside. By prayer clause (c) it has been prayed that the Defendant should be permitted to further lead the oral evidence and, by prayer clause (d) a prayer is sought that the further proceedings in Chamber

Summons No.1263 of 2001 and Notice of Motion No.865 of 2002 be stayed/deferred.

8. The learned counsel for the Defendants contends that in view of the Chamber Summons No.1901 of 2004 being taken out further proceedings in the earlier Chamber Summons being Chamber Summons No.1263 of 2002 and Notice of Motion No.865 of 2002 should not be proceeded with.

9. Today, the Chamber Summons No.1263 of 2001 and Notice of Motion No.865 of 2002 are both on board for hearing together. The matter was kept back for hearing in the morning. It was again called out at 12.15 p.m. when the learned counsel for the Defendants stated that the matter should be kept back again at 1.00 p.m. as the Defendant is on his way to reach the Court. However, he also tendered Chamber Summons No.1901 of 2004. He applied for a long adjournment. In view of the Chamber Summons No.1901 of 2004 being tendered in Court and contended that this Chamber Summons should be heard first and immediately. I asked the learned counsel for the Plaintiff whether he would like the matter be heard now or he desires an adjournment to file affidavit in reply. The learned counsel for the

Plaintiff has stated that he has no objection for hearing of Chamber summons immediately. The said Chamber Summons No.1901 of 2004 is taken up on board for hearing in accordance with the request made by the learned counsel for the Defendants and with the consent of the parties.

10. However, since the Defendant was not present in Court and his presence was necessary for conducting his cross-examination, in respect of the evidence which he has deposed in Chamber Summons No.1263 of 2001, the matter was kept back. I am informed by the learned counsel for both the parties that thereafter the Defendant did come to the Court and was outside the Court room but did not enter the Court room. Both the Advocates has confirmed the aforesaid fact. However, the learned Advocate for the Defendant informed me that the said Defendant has gone to the Office of the Prothonotary and Senior Master for making certain enquiries and, therefore, 10 minutes time should be given so as to inform him to attend the Court and continue with the cross-examination. The matter was again kept back for 10 minutes. At 12.45 when the matter was again called out the Defendant was still not present. However, the learned counsel for the Defendant made

one more request that the matters should be kept back so as to enable him to call the Defendant. The matter was again kept back to 1.00 p.m. At 1.00 p.m. when the matter was called out, the learned counsel for the Defendants seeks discharge from the proceedings and states that the Defendant though was here has now gone somewhere and his whereabouts are not known. He also states that most probably he has left the Court and is not likely to give further evidence as and by way of cross-examination. According to him, because of refusal of the Court to permit the Defendants to give evidence in Notice of Motion No.865 of 2002 on 6.12.2004 the Defendant is not inclined to participate in the matter any further. According to the learned counsel, the said order was erroneous and incorrect and he insist that oral evidence of Defendant should also be recorded in Notice of Motion No.865 of 2002. According to the learned counsel for the Defendant, in view of the order passed by the Appeal Court to hear the Chamber Summons and the Notice of Motion together means that evidence must be recorded not only in Chamber Summons but in both the proceedings i.e. in Notice of Motion No.865 of 2002 also. It is his contention that in view thereof, unless Chamber Summons No.1901 of 2004 is heard, the Defendant is

not inclined to give his cross-examination in Chamber Summons No.1263 of 2001 and has refused to attend the Court.

11. Apart from the aforesaid conduct of the Defendant in the present case, the learned counsel Mr.Purohit appearing for the Defendant is the fourth Advocate engaged by the Defendant herein. There are earlier three Advocates engaged and the discharge has been given. In view of the past conduct of the Defendant to discharge their Advocates whenever it was inconvenient for him to conduct the said proceedings as per his desire, I do not permit Mr.Purohit Advocate to take discharge in the present matter.

12. Furthermore, from the proceedings, it is clear that though the order of the Appeal Court directed that both the Chamber Summons No.1263 of 2001 and Notice of Motion No.865 of 2002 should be heard together, at no place it has been stated that oral evidence must be recorded by the learned Single Judge in respect of both the aforesaid proceedings. The learned Advocate for the Defendant is unable to show me from the record any order passed either by the learned Single Judge or by the Division Bench

that the recording of evidence must be conducted both in Chamber Summons no.1263 of 2001 and in Notice of Motion No.865 of 2002.

13. From the record, it indicates that the learned Single Judge (Karnik, J.) on 19.6.2002 decided to record evidence only in Chamber Summons No.1263 of 2001 though he was hearing the Notice of Motion No.865 of 2002 alongwith it. It is not disputed by the Defendant and/or his Advocate that in so far as the evidence in Chamber Summons No.1263 of 2001 is concerned, the Defendant has concluded his examination-in-chief. However, the Defendants contended that an oral evidence also should be recorded simultaneously in Notice of Motion No.865 of 2002. I have rejected the said request on earlier date of hearing i.e. on 6.12.2004. Today, the Chamber Summons No.1263 of 2001 as well as Notice of Motion No.865 of 2002 are both for hearing and final disposal. I am of the further opinion that recording of an oral evidence in Notice of Motion which is in the nature of interlocutory proceedings is in the discretion of the Court and not party can claim the same as a matter of right. In the present case, I am satisfied that no such oral evidence is required to be recorded till and

until the evidence is completed in Chamber Summons No.1263 of 2001. I am also satisfied that the Defendant is making on these applications with the sole intention of prolonging the matter and not to file a written statement on record. Thus, it is not possible to accept the contention of the Defendant that even before the cross-examination is concluded and evidence is concluded in Chamber Summons, his oral evidence also should be recorded in Notice of Motion.

14. The conduct on the part of the Defendant of refusal to attend the Court and make himself available for cross-examination leads me with no other alternative but to strike out his evidence in Examination-in-Chief in so far as Chamber Summons No.1263 of 2001 is concerned. It is a settled law that unless examination-in-chief is tested with touchstone of cross-examination, it cannot be taken into consideration. In view of the aforesaid position in law, I strike down the examination-in-chief of the Defendant in Chamber Summons No.1263 of 2001 and proceed with the hearing of both Chamber Summons No.1263 of 2001 as well as Notice of Motion No.865 of 2002 as also proceed with the hearing of the Chamber Summons No.1901 of 2004

tendered in Court today.

15. Firstly, as per the request of the Defendant's Advocate I shall deal with Chamber Summons No.1901 of 2004. The learned counsel for the Defendant submitted that save and except what is stated hereinabove, he has no other submissions to make. In my view, Chamber Summons No.1901 of 2004 is wholly misconceived and frivolous Chamber Summons and also is an abuse of the process of law. Firstly, the order dated 3.6.2002 passed by the Division Bench in Appeal No.430 of 2002 is concerned, it only directs that both the proceedings should be heard together i.e. Notice of Motion No.865 of 2002 and Chamber Summons No.1263 of 2001. I have kept both the matters for hearing together on 22.11.2004 and subsequently even today both matters are together on board for final hearing. Thus, in so far as prayer clause (a) is concerned that I should hear both proceedings together, is without any merits. In so far as prayer clause (b) is concerned, there is no order is passed on 6.12.2004 save and except closing of the examination-in-chief of Defendant No.2 in Chamber Summons No.1263 of 2001 because he had concluded his examination-in-chief in the said proceedings. The learned counsel

Mr.Purohit appearing on 6th December, 2004 confirmed that in so fr as examination-in-chief of the Defendant is concerned in Chamber Summons No.1263 of 2001, it is concluded and, in view thereof, he requested to close the examination-in-chief. However, he sought a further direction that further examination-in-chief should be carried out in Notice of Motion immediately which was declined by me. In so far as prayer clause (c) is concerned, the same is mischievous as the Defendant No.1 and his Advocate had confirmed that in so far as the oral evidence in Chamber Summons is concerned, they have concluded their oral evidence and, thus the prayer made for further oral evidence is without any merits and baseless.

16. In the light of the aforesaid fact, I find that the present Chamber Summons No.1901 of 2004 is misconceived and frivolous and, Hence, Chamber Summons No.1901 of 2004 is dismissed.

17. Now, turning to Chamber Summons No.1263 of 2001, I am of the opinion that in so far this Chamber Summons is concerned, the same is required to be dismissed for morethan one reasons. Firstly, under Rule 84 of the High Court (Original Side)

Rules, filing of vakalatnama is itself sufficient to show that the summons are duly served and/or in any way, the said requirement stands dispensed with. In the present case, admittedly, the Defendant has engaged the Advocates not one but earlier three Advocates. Admittedly, they have filed a vakalatnama in Court in the present proceedings. Thus, under Rule 84 there is a due service of the proceedings on the Defendant. The contention of the Defendant that the said vakalatnama of an Advocate is only to represent them in Notice of Motion for interim relief and not for the suit is required to be only stated to be rejected. Thee is no provision for engaging an Advocate in respect of each and every interim proceedings separately. Secondly, in the present case, the extract of the register of the Sheriff's office indicate that, in fact, one of two packets was returned back to the Office of the Sheriff. Whereas, in respect of an other packet an acknowledgment of delivery of this said packet was received back. The acknowledgment was collected by the Advocates of the Plaintiff through his clerk. However, the learned counsel for the Plaintiff states that the acknowledgment has been lost. In my view, even if the acknowledgment is lost, due service on the Defendant No.2 is evident from the

extracts of the register of the Sheriff which is maintained by him in due course of business. Thirdly, I find from the record that the Defendant had not only engaged three Advocates but also took out proceedings after proceedings for the purpose of inspection and various other reliefs including the contempt proceedings. I also find that the Advocate for the Defendants before the Prothonotary and Senior Master took time on various occasions for filing the written statement but still did not file the written statement and, thereafter has taken out the present proceedings inter-alia contending that the order passed by the Prothonotary and Senior Master for placing the matter for ex-parte decree is erroneous. I find that the present Chamber Summons for setting aside the order dated 14.9.2001 and for dismissal of the suit under Order XI Rule 21 is wholly misconceived and is an abuse of the process of law. The Defendant is engaging himself in frivolous litigation by filing matter after matter and he is seeking enquiry against the Plaintiff and now he is making allegations against the staff of the office of Prothonotary and Senior Master and the staff of Sheriff’s office. I find that the Defendants are deliberately taking out proceedings after proceedings and not filing their written

statement so as to delay the hearing of the present suit. The case of the Plaintiffs is that he is dispossessed from the suit premises without due process of law. The Defendants are thus enjoying the possession of the premises and, therefore, neither interested in conducting the present litigation nor permitting the Plaintiffs to prosecute his suit. The suits under section 6 of the Specific Relief Act are of summary nature and thus required to be decided expeditiously. However, the conduct on the part of the Defendant has defeated the said object. It is a high time that the litigants must know that the proceedings in the Court are the solemn proceedings and is meant to provide justice to the needy people. It is thus imperative that the conduct on the part of the Defendants to initiate frivolous proceedings after proceedings must be deprecated and stringent measure should be taken. In the present case it is not a case of mere taking out of frivolous proceedings but the nature thereof indicates that the same are initiated with a calculated motive to obstruct the Plaintiff from prosecuting the suit which he has initiated. In that light of the matter, I am inclined to take serious steps in the present case.

18. As far as Notice of Motion No.865 of 2002 is concerned the same is taken out for sanction of prosecution by way of perjury of the officers of the Court as well as the Plaintiff and the clerk of the Advocate of the Plaintiff. Notice of Motion No.865 of 2002 is also wholly misconceived and based on frivolous allegations and is a clear abuse of the process of the Court. Once I have held that the filing of vakalatnama by the Defendant is sufficient to establish due service of the proceedings on which I need not detain myself in going into the baseless allegations made in the present Notice of Motion. However, apart therefrom I do not find any material in support of the baseless allegations contained in affidavit in support of the Notice of Motion.

19. Apart from the fact that large number of proceedings are initiated by the Defendant one after another which are totally baseless and even on an earlier occasion a cost was imposed on him. However, the Defendant has not restrained himself from carrying on these activities and he has again filed a fresh Chamber Summons No.1901 of 2004 which has been lodged in this Court on 17.12.2004. In view of the aforesaid conduct on the apart of the Defendant which amounts to misuse of the process of

law, I am required to take very stringent action against the Defendant apart from dismissing all the aforesaid three proceedings i.e. Chamber Summons No.1263 of 2001, Notice of Motion No.865 of 2002 and Chamber Summons No.1901 of 2004. I therefore direct the Defendants to pay cost of each of the said proceedings quantified at Rs.15,000/- each.

20. I also direct the Office of the Prothonotary and Senior Master, High Court, Bombay to issue notice of contempt against Defendant No.1 for interfering with the administration of justice by taking out false and frivolous proceedings and abusing the process of law as also the conduct in delaying the Court by attending the Court but not entering in the witness box for further cross-examination in the present proceedings. The conduct on the part of the Defendant prima-facie establish that the Defendant is interfering with the administration of justice and, I, therefore, direct the issuance of a show-cause notice in exercise of my power under section 2(b) read with section 15 of the Contempt of Court Act as well as Article 215 of the Constitution of India. Contempt Notice to be returnable on 14.2.2005 and the same to be placed for hearing before the regular Court taking contempt

matters.

21. In view of allegation in the present case of tempering with the record, I also direct Prothonotary and Senior Master, High Court, Bombay to take the entire record of this case in her safe custody.